IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 30TH MAY 2007 / 9TH JYAISHTA 1929

WP(C).No. 35036 of 2004(U)

OS.197/2002 of MUNSIFF COURT, KARUNAGAPPALLY

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PETITIONER:

T.A.HABEEB RAHIMAN, KANIAMPARAMBIL,
EDAKKUNAKARA, MUNDAKKAYAM VILLAGE.

BY ADV. SRI.T.I.ABDUL SALAM

RESPONDENTS:

P.S.ISMAIL, PUTHUPPARAMPIL,
KOOTICKAL KARA, MUNDAKKAYAM VILLAGE.

BY ADV. SRI.K.A.HASSAN
SMT.P.SHYNI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO. 35036/2004

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE PETITION DATED 25.6.2003 FILED BY THE PETITIONER IN O.S. NO. 197/2002.

EXT.P2: COPY OF THE OBJECTION DATED 20.8.2003 FILED BY THE RESPONDENT IN O.S. 197/2002 OF THE MUNISFF'S COURT, KANJIRAPPALL.

EXT.P3: COPY OF THE RECEIPT DATED 30.12.2000 ISSUED BY THE PETITIONER TO THE RESPONDENT.

EXT.P4: COPY OF TH ORDER DATED 10.6.2004 IN I.A. NO. 764/2003 IN O.S. NO. 197/2002 OF THE MUNSIF COURT, KANJIRAPPALLY.

RESPONDENT'S EXHIBITS:

EXT.R1 (A): COPY OF THE SAID NOTICE DATD 5.4.2002

EXT.R1(B); COPY OF THE SAID REPLY NOTICE DATED 11.4.2002

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 35036 OF 2004

Dated this the 30th day of May, 2007

JUDGMENT

Ext.P4 order passed by the learned Munsiff, Kanjirappally on an application filed by the plaintiff in a suit for recovery of arrears of rent for sending certain documents for forensic scrutiny is under challenge. Ext.P1 is a copy of the application and Ext.P2 is a copy of the objection filed by the respondent/defendant.

2. In this court a detailed counter affidavit has been filed by the respondent also. Inter alia it is contended therein that this court will not be justified within the contours of powers under Article 227 in interfering with the impugned order. It is also contended that forensic report as sought for in Ext.P1 will not be of any assistance to the court in resolving the issue and that, at any rate, no useful purpose will be served even from the point of

view of the plaintiff.

3. The principal bone of contention between the parties in the suit is as to what is the contract rent payable for the building in question belonging to the petitioner and let out to the respondent. While the plaintiff contends that in October 2000 the rent was enhanced from 400 to 1,200/-, the defendant would maintain on the strength of two documents which were produced by him in O.S. No.110/2002, (a suit for injunction restraining forceful eviction which had been filed by the defendant even prior to the present suit for arrears of rent filed by the petitioner) that the contract rent at all relevant points of time is Rs.400/- only. The original of Ext.P3 receipt is one among the two documents relied on by the respondent to support his contention that the contract rent is Rs.400/-. The case of the petitioner is that the certain concoctions have been made in the original of Ext.P3 which was issued by him. According to him, counter foil of Ext.P3, which is retained by him, will show that the original of Ext.P3 was issued for a sum of Rs.1,200/- on account of rent for the month of December 2000. The learned Munsiff after hearing the parties dismissed Ext.P1 application, taking the view that

since the case of the plaintiff is that it is the respondent who fabricated the original of Ext.P3, the respondent ought to have sought a forensic comparison of the original of Ext.P3 with specimen handwriting of the respondent along with his disputed handwritings. According to the learned Munsiff, since the prayers in Ext.P1 is that Forensic comparison of Ext.P3 be made with the plaintiff's own handwriting in the counter foil of Ext.P3, it cannot be said that the petition is meritorious.

3. I have heard the submissions of Mr. T.I.Abdul Salam, the learned counsel for the petitioner and Sri. K.A. Hassan, the learned counsel for the respondent. The learned counsel would make elaborate submissions on the basis of the grounds relied in the writ petition and the averments in the counter affidavit. Having considered the rival submissions, I am of the view that the learned Munsiff has gone at a wrong tangent in dismissing the application. Obviously, the cardinal issue which will be have to be resolved in this case is as to what is the monthly contract rent payable by the respondent after October 2000 whether it is 400/- or Rs.1,200/-. The petitioner's case is that since October

2000, the rent was enhanced from Rs.400/- to Rs.1,200/-. The counter foil of the receipt which had issued against the payment of the rent for the month of December will reveal that for the month of December the respondent paid sum of Rs.1,200/-. His case is that in the original receipt which was issued to the respondent against rent for December, the respondent made certain insertions. The months October and November were also inserted after the name of the tenant. The plaintiff's case is that the name of the tenant and the month against which rent is paid (December 2000) is written in the original receipt as well as in the counter foil by one and the same person while the months October and November and further insertion 400 X 3 = 1200 presently appearing on the original of Ext.P3 have been made either by the respondent or at his instance. A forensic comparison of the handwritings on the counter foil and disputed handwritings in Ext.P3 may be of some assistance to the court in resolving the issue. The very stiffness of the opposition of the respondent in the matter should have been a justification for the learned Munsiff to allow the application. Mr.Hassan the learned counsel for the respondent submitted that the respondent is

having the originals of the previous receipts which were issued by the petitioner to him against payment of rent. I direct the respondent to produce original of three receipts which were issued by the petitioner to the respondent prior to the original of Ext.P3 so as to enable the learned Munsiff to send those receipts along with the original of Ext.P3 and the counter foil relating to Ext.P3 for comparison.

4. Result of the above discussion is that Ext.P4 is set aside. I.A. 764/2003 will stand allowed. The learned Munsiff will send the two documents referred to in the I.A. along with the documents to be produced by the respondent as directed in this order to an expert to be identified by the learned Munsiff himself. The expenses in that regard shall be borne by the plaintiff for the time being, but will form part of the cost of the suit.

The Writ Petition is allowed as above. No costs.

PIUS C. KURIAKOSE,

JUDGE.

dpk